

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
WILLIAM REYES,

Petitioner,

-against-

SUPERINTENDENT ERCOLE,

Respondent.
-----X

06 Civ. 5525 (SHS)

ORDER

SIDNEY H. STEIN, U.S. District Judge.

William Reyes brings this petition pursuant to 28 U.S.C. § 2254 alleging that his confinement by the State of New York is unlawful because (1) his conviction was against the weight of the evidence and thus violated due process, (2) newly discovered exculpatory evidence demonstrates that his right to due process and a fair trial were denied when the prosecution's witness committed perjury, (3) the prosecutor violated the Fourteenth Amendment by failing to disclose the exculpatory evidence, (4) the trial court improperly admitted evidence of the victim's emotional response to the rape and prior history of sexual abuse into the record, (5) prosecutorial misconduct during jury selection deprived him of a fair trial by an impartial jury, and (6) his trial counsel provided ineffective assistance. In a Report and Recommendation dated November 20, 2008, Magistrate Judge Kevin Nathaniel Fox concluded that Mr. Reyes was not entitled to habeas relief on any of these grounds and that the petition should be denied in all respects. Mr. Reyes filed an objection to the Report and Recommendation on December 27, 2008.

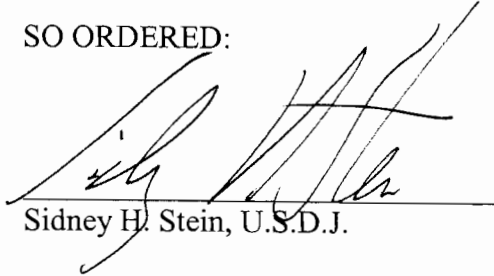
Upon de novo review of Judge Fox's Report and Recommendation dated November 20, 2008 and of petitioner's objections dated December 27, 2008, the Court adopts the findings and conclusions of the Report and Recommendation.

Accordingly, IT IS HEREBY ORDERED that:

1. Magistrate Judge Fox's Report and Recommendation is adopted;
2. The petition pursuant to 28 U.S.C. § 2254 is dismissed;
3. As petitioner has not made a substantial showing of the denial of a constitutional right, a certificate of appealability will not issue. 28 U.S.C. § 2253; *see also Richardson v. Greene*, 497 F.3d 212, 217 (2d Cir. 2007); and
4. Pursuant to 28 U.S.C. § 1915(a), the Court certifies that any appeal from this Order would not be taken in good faith.

Dated: New York, New York
March 25, 2009

SO ORDERED:



Sidney H. Stein, U.S.D.J.